

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF MARINE MAMMAL INCIDENTAL HARASSMENT AUTHORIZATION TO THE
CITY OF SAN DIEGO FOR THE CONDUCT OF SAND QUALITY STUDY ACTIVITIES AT THE CHILDREN'S
POOL BEACH IN LAJOLLA, CALIFORNIA**

NATIONAL MARINE FISHERIES SERVICE

BACKGROUND

The National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) is proposing to issue an Incidental Harassment Authorization (IHA) to the City of San Diego, Transportation and Storm Water Department pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. §§ 1631 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). This IHA would be valid from June 1, 2016 to May 30, 2017, and would authorize takes, by Level B harassment, of three species of marine mammals incidental to the conduct of sand quality study activities at the Children's Pool Beach in La Jolla, California.

NMFS' proposed action is a direct outcome of the request which involves teams of two to three people collecting sand samples for approximately four hours along transects parallel to the shoreline between the water line and the seawall/bluff railing. Up to 16 such sand sampling events are proposed for the sand quality study period between June 1 and December 14, 2016. Visual stimuli due to the presence of technicians and their sand collection activities has the potential to cause marine mammals in the vicinity of the project area to be behaviorally disturbed, and therefore, qualify for an authorization from NMFS. NMFS' criteria for an IHA requires that the taking of marine mammals authorized by an IHA will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, the IHA must set forth, where applicable, the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The issuance of an IHA to allow the taking of marine mammals, consistent with provisions under MMPA, is considered a major federal action under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*). Therefore, NMFS prepared an Environmental Assessment (EA) titled, "Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Conducting a Sand Quality Study at Children's Pool Beach in LaJolla, California" to evaluate the significance of the impacts of our proposed action. This EA and Finding of No Significant Impact were prepared in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations in 40 CFR §§1500-1508. Based on the Final EA and City of San Diego's application, NMFS's alternatives include:

- Alternative 1 (Preferred Alternative): Issue an IHA to the City of San Diego authorizing unintentional take of marine mammals incidental to the conduct of sand quality study activities. The authorization includes the prescribed means of take and requires mitigation measures, monitoring and reporting.

- **Alternative 2 (No Action Alternative):** For NMFS, denial of an MMPA authorization constitutes the NMFS No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny permit applications and to prescribe mitigation, monitoring and reporting with any authorizations. If NMFS did not issue an IHA, the City of San Diego would not receive an exemption from the MMPA prohibition against the take of marine mammals. For purposes of NMFS' NEPA analysis, we assume that the City would therefore choose not to continue forward with the project.

ANALYSIS

The Council on Environmental Quality (CEQ) regulations at 40 C.F.R. § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on CEQ's context and intensity criteria. These include:

- 1) **Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?**

Response: No. NMFS determined that the issuance of the IHA and mitigation and monitoring measures required by the IHA for the action would not result in adverse effects to EFH. Therefore, we determined that EFH consultation is not required. Our proposed action would have no effects on the physical environment beyond those resulting from the sand quality sampling evaluated in the proposed IHA and the City of San Diego's application. The effects of the sand quality sampling would not result in substantial damage to ocean and coastal habitat that might constitute marine mammal habitat, as the effects would be minimal and temporary in nature. The issuance of an IHA would not affect physical habitat features, such as substrates and water quality.

- 2) **Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

Response: No. We do not expect our action of issuing an Authorization for the take of marine mammals incidental to the conduct of sand quality study activities to have a substantial impact on biodiversity of ecosystem function within the affected environment. The taking, by harassment, of marine mammals would result in minor and temporary disturbance to pinnipeds that are hauled out on the beach, but these effects would be short-term and localized. In addition, the affected area is a highly urbanized, mixed use beach and pinnipeds hauled out at this location are acclimatized to the presence of humans so impacts are anticipated to be very minor.

- 3) **Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?**

Response: No. We do not expect our action of issuing an Authorization for the take of marine mammals incidental to the conduct of sand quality study activities to have a substantial adverse impact on public health or safety as the taking, by harassment, of marine mammals would pose no risk to humans.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: No. The impacts of the sand quality study activities on marine mammals are specifically related to pinnipeds potentially being alerted/flushed due to the presence of small teams of people walking the beach and collecting sand samples for the sand quality study. We expect that any effect to marine mammals within the vicinity of the sand quality study activities would be limited to temporary behavioral responses and temporary changes in animal distribution. At most, we interpret these effects on marine mammals as falling within the MMPA definition of Level B (behavioral) harassment.

The Guadalupe fur seal is the only marine mammal species protected by the Endangered Species Act (ESA) that would potentially be impacted by the proposed sand quality study activities. This species is listed as threatened under the ESA. Due to the fact that an Unusual Mortality Event (UME) has been declared in California for Guadalupe fur seals (a threatened species under the ESA), and instances of stranded northern and Guadalupe fur seals are much higher than average in Southern California, NMFS considered the potential effects of the sand quality sampling activities on these species. NMFS has determined that there is no potential for this project to affect Guadalupe fur seals because occurrence of this species at Children's Pool Beach would be extremely rare and likely indicative of a sick or injured animal. Therefore, if any fur seals are observed, sand quality sampling activities would not be conducted if fur seals were present at this location in order to avoid potentially harassing these species. Coordination with the stranding network would take place if any fur seals were observed at Children's Pool and sand quality sampling would not commence until the animal(s) have either left on their own accord or are collected by the stranding network. Therefore, NMFS determined that the sand quality sampling activities would not affect Guadalupe fur seals and a formal consultation under Section 7 is not required.

The affected area is not identified as critical habitat for any threatened or endangered species and the proposed issuance of an Authorization for the take of marine mammals, by harassment, incidental to the conduct of sand quality study activities would not have a substantial impact on other non-target species or other marine mammals.

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. The impacts to the natural and physical environment would be temporary, minor in nature, and not interrelated with significant social or economic impacts. Issuance of an Authorization for the take, by harassment, of marine mammals incidental to the conduct of sand quality study activities would not result in inequitable distributions of environmental burdens or access to environmental goods. The action would only affect marine mammals, so would have no adverse and disproportionate effects to low-income or minority populations. There would also be no impacts on the availability of the species or stocks of marine mammals for subsistence uses due to the proposed activity. Therefore, there would be no significant social or economic impacts as a result of our issuance of an Authorization.

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. The effects of issuing an IHA to the City of San Diego as described in Alternative 1 of the EA on the quality of the human environment are not likely to be highly controversial because: 1) there is no substantial dispute regarding the size, nature, or effect of the proposed action; 2) there is no known scientific controversy over the potential impacts of the proposed action; and 3) all comments received during the public comment period supported the issuance of the IHA. The proposed IHA was made available for public review and comment from April 4, 2016 to May 4, 2016. One comment was received during the public review period from the Marine Mammal Commission, which concurred with NMFS findings and recommended issuing the IHA with the proposed monitoring and mitigation requirements. No other public comments were received.

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat (EFH), or ecologically critical areas?

Response: No. NMFS' Authorization is limited to the take, by harassment, of marine mammals incidental to the City of San Diego's conduct of sand quality sampling activities and does not authorize the sand quality study activity itself. Therefore, NMFS' action is limited to activities that do not have effects on cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas. The effects of the sand quality study activities on natural processes would be minor and temporary.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The proposed project would involve temporary and minor impacts in an area that is already highly disturbed site with a lot of human activity. The proposed NMFS action of issuing an IHA to the City of San Diego would not have effects to the human environment that are highly uncertain or involve unique or unknown risks, and would be similar to other past and ongoing IHAs for visual disturbance projects.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. The Cumulative Effects section of the EA (incorporated by reference herein) concluded that the impacts of the sand quality study activities are expected to be no more than minor and short-term with no potential to contribute to cumulatively significant impacts. To summarize, the affected area is a highly disturbed, mixed use beach and pinnipeds that utilize the beach have become acclimatized to human presence. Hauled out pinnipeds often show no reaction to approaches as close as three meters (m) at Children's Pool Beach. The proposed sand quality study activities would add another, albeit temporary and minor, activity to the Children's Pool Beach environment; however, technicians will maintain buffer distances of at least three meters from any pinniped on the beach. In addition, the sand quality study activities would be conducted to the extent possible during times when the least number of pinnipeds are hauled out to avoid adding to potential disturbance. Further, the sand quality study activities would consist of a fairly low number of sampling events that are fairly short in duration (up to 16 sampling events to be conducted, each up to four hours in length, over approximately 28 weeks from June 1, 2016 – December 14, 2016), conducted in the non-pupping season to avoid potential for impacts during this critical life stage. Therefore, we have determined that the NMFS action of issuing an IHA to the City of San Diego would not have significant cumulative impacts.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources?

Response: No. The sand quality study activities in the affected area involve removal of a very minor amount of sand from the beach (less than one cubic foot in total for the entire study). The issuance of an IHA for the take, by harassment, of marine mammals incidental to the conduct of sand quality study activities would not adversely affect districts, sites, highways, structures, or objects listed, or eligible for listing, in the National Register of Historic Places. The issuance of an IHA would not cause loss or destruction of significant scientific, cultural, or historical resources either because such resources do not exist within the project area, or are not expected to be adversely affected.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. The issuance of the IHA cannot reasonably be expected to lead to the introduction or spread of any non-indigenous species into the affected environment because the activities associated with the proposed action involve only the removal of very minor amounts of sand from the beach (less than one cubic foot in total) involving sterile collection instruments.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: No. The issuance of an IHA is not expected to set a precedent for future actions with significant effects, not represent a decision in principle regarding future considerations. The issuance of an IHA to take marine mammals, by harassment, incidental to research activities in the coastal environment is a routine process under the MMPA. To ensure compliance with statutory and regulatory standards, NMFS' actions under section 101(a)(5)(D) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of an IHA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to conduct similar activities. Subsequent requests for incidental take authorizations would be evaluated upon their own merits relative to the criteria established in the MMPA, ESA, and NMFS implementing regulations on a case-by-case basis. The project has no unique aspects that would suggest it would be a precedent for any future actions. For these reasons, the issuance of an IHA to the City of San Diego to conduct sand quality study activities would not be precedent-setting.

13) Can the proposed action reasonably be expected to violate any Federal, State, or local law or requirements imposed for the protection of the environment?

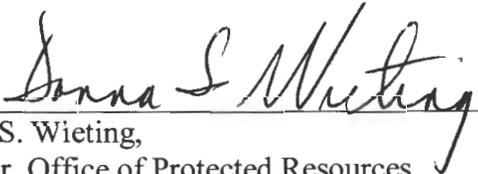
Response: No. The City of San Diego has fulfilled its responsibilities under the MMPA for its action. The issuance of an IHA would not result in any violation of federal, state, or local laws for environmental protection. The applicant is required to obtain any additional federal, state and local permits necessary to carry out the proposed activities.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. The issuance of an IHA is not expected to result in any significant cumulative adverse effects that could have a substantial effect on target or non-target species because the minor and short term stresses (separately and cumulatively when added to other stresses experienced by the marine mammals in the vicinity of the affected area) resulting from the sand quality study activities would be expected to be minimal.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Final EA prepared by NMFS, it is hereby determined that the issuance of an IHA to the City of San Diego for the take, by harassment, of small numbers of marine mammals incidental to the conduct of sand quality study activities at the Children's Pool Beach in LaJolla, California, will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.



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MAY 26 2016

Date